

CIVIL SERVICE COMMISSION MINUTES

MARCH 4, 1998

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin, President
Roy Dixon, Vice-President
Mary Gwen Brummitt

Comprising a quorum of the Commission

Larry Cook, Executive Officer
Ralph Shadwell, Deputy County Counsel
Joy Kutzke, Reporting

Commissioners Gloria Valencia-Cothran and Paul Thomas being absent

CIVIL SERVICE COMMISSION MINUTES
March 4, 1998

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,7,10,12,14		11	4,5

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Brummitt. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda.

a. Commissioner Dixon: **Donna Pounds** appealing an Order of Termination from the Department of Public Works.

b. Commissioner Brummitt: Complaint of **Natalie Cohen** alleging disability, age and gender discrimination by the Assessor/Recorder/County Clerk.

REGULAR AGENDA

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of February 18, 1998.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Valencia-Cothran as hearing officer in the appeal of **Laura A. Gacek** from an Order of Suspension from the Sheriff.

Confirmed.

3. Commissioner Austin as hearing officer in the appeal of **William G. Powell** from an Order of Termination from the Sheriff.

Confirmed.

WITHDRAWALS

4. Richard Pinckard, Esq., on behalf of **Patricia Bowles** appealing an Order of Separation from the Probation Department. Commissioner Valencia-Cothran was assigned as hearing officer.

Withdrawn.

5. Deborah Olberding, S.E.I.U. Local 2028, on behalf of **Carol Kerr** appealing an Order of Compulsory Leave from the District Attorney. Commissioner Austin was assigned as hearing officer.

Withdrawn.

DISCIPLINARY FINDINGS

6. Commissioner Dixon: **Donna Pounds** appealing an Order of Termination from the Department of Public Works.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I – incompetency (failure to follow office procedures); Cause II – insubordination; and Cause III – inefficiency. Employee became the subject of progressive discipline due to her inability to perform essential job functions. Employee was unsuccessful, at the hearing, in attempts to defend her actions or lack thereof. Testimony at the hearing indicated that the Department's high level of tolerance for Employee's mistakes was motivated by her ability to interact well with others as well as her cooperation in desiring to improve her performance. This hearing officer concludes that Employee is unable to perform the essential functions of her job requirements; that she was well-liked and that significant efforts at improving her performance were initiated by her supervisor. However, she had chronic oversights and failed to

follow prescribed procedures and her job performance remained unsatisfactory. Employee is guilty of Causes I, II and III. It is therefore recommended that the Order of Termination and Charges be affirmed and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Dixon to approve Findings and Recommendations;
seconded by Brummitt. Carried.**

REQUEST FOR RECONSIDERATION

Complaints

7. James Gattey, Esq. requesting reconsideration of the Commission's interpretation of Civil Service Rule 7.7.2 as advised by County Counsel. This matter was addressed at the CSC meeting on February 18, 1998.

RECOMMENDATION: Grant request to address reconsideration, and follow County Counsel's advice. In addition, do not order a Rule amendment on this matter.

Commissioner Brummitt expressed concerns regarding the County extending a right to an appellant to interview, and not ensuring that right. She asserted that the policy should be interpreted in a way as to ensure such rights even though County Counsel advised that it is an unenforceable right. She suggests a revision to the rules would clarify the issue. Larry Cook, Executive Officer, responded that Commission staff has acted as a conduit to encourage potential witnesses to be interviewed with success, thus far, with the exception of the recent hearing. He does not recommend a rule change because the situation rarely occurs. He suggested staff be allowed to monitor the situation for a period of time. Should the issue persist, it will be reported to the Commission and at that time it may choose to consider a Rule change. Commissioner Austin shared concerns relating to departments and appellants having the same access to interview witnesses. He supports a Rule amendment that would compel potential witnesses to submit to prehearing interviews, and create sanctions for those who fail to comply. Commissioner Dixon brought up concerns about forcing employees to speak at interviews against their will.

Staff is directed to monitor issues relating to prehearing interviews and report back to the Commission if situations continue.

SELECTION PROCESS FINDINGS/COMPLAINTS

Findings

8. **Michael Hettinger** appeal of removal of his name by DHR from the employment list for Field Service Officer I for failure to meet the employment standards.

RECOMMENDATION: Ratify Item No. 8. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Ratified.

Complaints

9. Jerri Abernathy, Esq. on behalf of **William Joseph Cox**, an employee in the Department of Social Services appealing the selection process by the Probation Department for the classification of Deputy Probation Officer. (See also No. 11.)

RECOMMENDATION: Deny request due to late (approximately 49 days) filing of appeal.

Staff recommendation approved.

Findings

10. Commissioner Valencia Cothran: James Rutkowski, Esq., and Stewart Kocivar, Union Representative, S.E.I.U. Local 535, on behalf of **Helen Antoniak** appealing the selection process for Protective Service Worker II in the Department of Social Services.

FINDINGS AND RECOMMENDATIONS:

Ms. Antoniak has been employed in the Department of Social Services for approximately nine years. She was the subject of an Order of Suspension and Transfer which she appealed to the Commission. The Commission modified the discipline, upholding some of the charges pertaining to an incident which occurred in 1995/96. Employee appealed a performance appraisal through the department appeal process on the basis that it improperly relied on matters for which she was exonerated as the result of the above-mentioned Rule VII disciplinary appeal. She then requested that same performance appraisal be sealed by the Civil Service Commission because it reflected two incidents for which she was exonerated in her disciplinary appeal before the Commission. Agreeing with Employee's concerns, however, being advised by County Counsel that the Commission did not have jurisdiction to seal the appraisal, a memo

from the Commission to the Department was placed in Employee's personnel file along with the Performance Appraisal. Subsequently, DSS proceeded with a mass promotion to a newly formed classification of PSW II. Employee's qualifications exceeded the minimum qualifications required in order to be eligible for promotion. Additional criteria used by the Department in considering promotability were: (1) whether the employee was the subject of formal discipline within the previous two years, and (2) whether the employee had received a "does not meet expectations grade on his/her most recent Performance Appraisal. Ms. Antoniak was denied a promotion. She objected to the denial on the basis of having been exonerated by the Commission regarding two of the three charges in the disciplinary matter. In Ms. Antoniak's case there was no evidence presented at the hearing that, prior to the promotion selection process, employees were informed that these criteria would be applied. Department personnel testified that failure on any one criterion did not mandate denial of a promotion. It is concluded (a) that Employee is a good candidate to be promoted to PSW II. Employee far exceeded the minimum qualifications for the position. Employee passed the required exam in the top 10-15%. She has made contributions to the Department and the County which exceed the reasonable expectations pertaining to an Employee. These facts offset her incident of formal discipline and the single negative mark on her most recent Performance Appraisal, and b) the manner in which the Department applied the two additional criteria in the promotion selection process presented concerns for this Hearing Officer. It did not appear that employees were made aware of the existence of these criteria. There appeared to be inconsistent application of the criteria. There did not appear to be a clear policy or understanding of how the criteria were to be applied. Unlike a promotion seeking to advance exceptional employees over their peers, the Departments's intent was to promote virtually everyone in the PSW classification that met the minimum qualifications resulting in the mass promotion of approximately three hundred forty (340) employees. In substance, this process operated more like a reclassification than a promotion. These circumstances warrant more clear and consistent criteria for denying promotions. It is therefore recommended that the Appeal be granted; that a strong recommendation be given to the Director of DSS that he consider promoting employee to the classification of Protective Services Worker II; and that the Commission approve and file this report.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Dixon. Carried.**

Commissioner Dixon shared concerns regarding Ms. Antoniak having come before the Commission on three separate occasions, and on each of those occasions the Commission has found in her favor. He made a

recommendation that the Commission conduct a Rule XI investigation into the personnel practices of Ms. Antoniak's current and previous units.

Motion by Dixon to conduct a Rule XI investigation into the personnel practices of Ms. Antoniak's current and previous units in DSS; seconded by Austin. Carried.
Commissioner Brummitt assigned as Investigating Officer.

DISCRIMINATION

Complaints

11. Jerri Abernathy, Esq. on behalf of **William Joseph Cox** alleging disability and racial discrimination by the Probation Department. (See No. above 9.)

RECOMMENDATION: Assign to a Commissioner and forward to EOMO for investigation and report back to the Commission.

Staff recommendation approved - Commissioner Dixon assigned as hearing officer.

Findings

12. Commissioner Brummitt: Complaint of **Natalie Cohen** alleging disability, age and gender discrimination by the Assessor/Recorder/County Clerk.

FINDINGS AND RECOMMENDATIONS:

The complaint was forwarded to EOMO for investigation and report back to this Commission. The report of EOMO has been received and reviewed by this Investigating Officer, who concurs with the findings that there is insufficient evidence to support a finding of probable cause that gender, age and/or disability discrimination has occurred by the Assessor/Recorder/County Clerk. Therefore, it is recommended that: Natalie Cohen's complaint be denied; and the Commission approve and file this report.

Motion by Brummitt to approve Findings and Recommendations; seconded by Dixon. Carried.

OTHER MATTERS

Extension of Temporary Appointments

13. Social Services

1 Protective Services Worker I (Maria N. Gonzales)

RECOMMENDATION: Ratify.

Ratified.

14. Requests for Rule XI Investigations during probationary periods.

RECOMMENDATION: Accept verbal and written input from staff. This matter was previously discussed at the CSC meeting of February 18, 1998. The Commission directed that it be brought back for further consideration.

Larry Cook, Executive Officer, addressed the Commission regarding the issue of the Commission conducting investigations relating to employees who fail probation. He stated it is within the Commission's jurisdiction to conduct an investigation when individuals fail probation and allege violations of the merit system. Although there may be no remedy to offer, the Commission may wish to investigate to sort out the issues and recommend or direct corrective action. He recommends no action be taken because the current rules allow such investigations. Commissioner Austin clarified that Mr. Cook was recommending no action with specific regard to the request for an investigation on behalf of Fabian Martinez. Mr. Cook explained that the main issue regarding the Martinez case was that there was no remedy for him. Also, from his observations in the Ramos/Wagner matter relating to Mr. Martinez, he sees no reason to conduct an investigation. Commissioner Austin stated that if the Civil Service Commission and the Civil Service Rules were established to protect the merit basis of the personnel system, he believes that basis was clearly violated in the case of Martinez. He contends that had Mr. Martinez not been a probationary employee, there would have been no basis to terminate him. Although the Commission cannot give him his job back, an investigation would bring to the public's attention that there have been violations of the merit basis of the personnel system in that Department. Commissioner Dixon expressed his views supporting staff recommendation. Commissioner Brummitt stated that because there is no remedy to offer, she did not support an investigation, however, suggested the appropriateness for Commissioner Austin, as the Hearing Officer as well the President of the Commission, to express his concerns to the Department head at the direction of the Commission. Although the Commission did not take a

formal vote, the Commission supported Commissioner Austin writing a letter to the Chief Probation Officer expressing its concerns.

15. Public Input.

ADJOURNMENT: 3:35

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE APRIL 1, 1998.